

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JESSE IRELAND,)	
)	Civil Action File No.
Plaintiff,)	
)	_____
v.)	
)	<i>Removed from:</i>
THE KROGER CO. AND JOHN DOE,)	State Court of Fulton County
)	Civil Action No. 23EV000665
Defendants.)	
)	

**DEFENDANT THE KROGER CO.’S ANSWER AND
DEFENSES TO PLAINTIFF’S COMPLAINT FOR DAMAGES**

COMES NOW The Kroger Co. in the *Complaint for Damages* of Plaintiff Jesse Ireland (hereinafter referred to as “Plaintiff”), in the above-styled civil action, by and through undersigned counsel, and files this, its *Answer and Defenses* thereto, further showing this honorable Court as follows:

FIRST DEFENSE

Plaintiffs’ *Complaint* fails to state a claim upon which relief may be granted, and therefore should be dismissed.

SECOND DEFENSE

Defendant asserts and preserves all O.C.G.A. 9-11-12(b) defenses.

THIRD DEFENSE

Defendant's actions were not the cause of any damages to Plaintiffs.

FOURTH DEFENSE

No action or omission on the part of Defendant proximately caused the alleged incident at issue or the alleged injuries and damages of Plaintiffs, and therefore Plaintiffs cannot recover from this Defendant in any sum or manner whatsoever.

FIFTH DEFENSE

Defendant was without fault or negligence of any kind or nature in the incident which forms the basis of Plaintiffs' *Complaint*, with the result that Plaintiffs is not entitled to recover any damages whatsoever of this Defendant.

SIXTH DEFENSE

Defendant breached no legal duty owed to Plaintiffs, was not negligent in any way and therefore Plaintiffs cannot recover from this Defendant in any sum or manner whatsoever.

SEVENTH DEFENSE

Plaintiffs' alleged injuries and damages are the result of the acts and/or omissions of persons or entities other than Defendant over whom this Defendant had no control, and from whose negligence, fault or actions this Defendant is in no way responsible.

EIGHTH DEFENSE

Defendant reserves the right to amend this Answer and assert other defenses as may become appropriate based on information it acquires through discovery or otherwise in the course of this litigation.

NINTH DEFENSE

Plaintiffs was contributorily and comparatively negligent such that Plaintiffs cannot recover from Defendant or that any recovery from Defendant must be reduced by an amount in proportion to Plaintiffs' own negligence.

TENTH DEFENSE

Defendant asserts the defense of equal or superior knowledge.

TWELFTH DEFENSE

Defendant reserves the right to set forth further and/or additional defenses as may be revealed via discovery.

THIRTEENTH DEFENSE

Without limiting or waiving any defense raised herein, Defendant answers the individually numbered paragraphs of the Plaintiffs' *Complaint* as follows:

PRELIMINARY STATEMENT

1.

Defendant is without knowledge or information sufficient to form a belief as

to the truthfulness of the facts as alleged in Paragraph 1 of Plaintiff's *Complaint* and therefore denies same.

PARTIES, JURISDICTION, AND VENUE

2.

Defendant reaffirms and incorporates its response to Paragraph 1 of Plaintiff's *Complaint* as fully set forth herein.

3.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 3 of Plaintiff's *Complaint* and therefore denies same.

4.

In response to the averments alleged in Paragraph 8 of Plaintiffs' Complaint, Defendant Kroger admits it is an Ohio corporation authorized to do business in Georgia, and its registered agent in Georgia is CSC of Cobb County, Inc., at 192 Anderson St. SE, Suite 125, Marietta, Cobb County, Georgia. By way of further response to said paragraph, Defendant Kroger states that those averments not expressly admitted or denied are hereby denied.

5.

Defendant is without knowledge or information sufficient to form a belief as

to the truthfulness of the facts as alleged in Paragraph 5 of Plaintiff's *Complaint* and therefore denies same.

6.

The allegations contained in Paragraph 6 of Plaintiff's *Complaint* are denied as stated.

7.

The allegations contained in Paragraph 7 of Plaintiff's *Complaint* are denied as stated.

FACTS

8.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 7 of Plaintiff's *Complaint* as if fully set forth herein.

9.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 9 of Plaintiff's *Complaint* and therefore denies same.

10.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 10 of Plaintiff's *Complaint*

and therefore denies same.

11.

The allegations contained in Paragraph 11 of Plaintiff's *Complaint* are denied.

12.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 12 of Plaintiffs' *Complaint* and therefore denies same.

13.

The allegations contained in Paragraph 13 of Plaintiff's *Complaint* are denied.

COUNT I - NEGLIGENCE PER SE

14.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 13 of Plaintiff's *Complaint* as if fully set forth herein.

15.

The allegations contained in Paragraph 15 of Plaintiff's *Complaint* are denied.

16.

The allegations contained in Paragraph 16 of Plaintiff's *Complaint* are denied.

17.

The allegations contained in Paragraph 17 of Plaintiff's *Complaint* are denied.

COUNT II – NEGLIGENCE

18.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 17 of Plaintiff's *Complaint* as if fully set forth herein.

19.

Defendant admits it owed certain statutory duties under the law, but denies such duties are accurately stated in Paragraph 15 of the Complaint.

20.

The allegations contained in Paragraph 20 of Plaintiff's *Complaint* are denied.

21.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 21 of Plaintiff's *Complaint* and therefore denies same.

22.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 22 of Plaintiff's *Complaint* and therefore denies same.

23.

The allegations contained in Paragraph 23 of Plaintiff's *Complaint* are denied.

24.

The allegations contained in Paragraph 24 of Plaintiff's *Complaint* are denied.

25.

The allegations contained in Paragraph 25 of Plaintiff's *Complaint* are denied.

26.

The allegations contained in Paragraph 26 of Plaintiff's *Complaint* are denied.

27.

The allegations contained in Paragraph 27 of Plaintiff's *Complaint* are denied.

28.

The allegations contained in Paragraph 28 of Plaintiff's *Complaint* are denied.

29.

The allegations contained in Paragraph 29 of Plaintiff's *Complaint* are denied.

30.

The allegations contained in Paragraph 30 of Plaintiff's *Complaint* are denied.

COUNT III – RESPONDEAT SUPERIOR

31.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 30 of Plaintiff's *Complaint* as if fully set forth herein.

32.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 32 of Plaintiff's *Complaint* and therefore denies same.

33.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 33 of Plaintiff's *Complaint* and therefore denies same.

34.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 34 of Plaintiff's *Complaint* and therefore denies same.

LIABILITY

35.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 34 to Plaintiff's *Complaint* as if fully set forth herein.

36.

The allegations contained in Paragraph 36 of Plaintiff's *Complaint* are denied.

DAMAGES

37.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 36 of Plaintiff's *Complaint* as if fully set forth herein.

38.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 38 of Plaintiffs' *Complaint* and therefore denies same.

39.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 39 of Plaintiffs' *Complaint* and therefore denies same.

40.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 40 of Plaintiffs' *Complaint* and therefore denies same.

41.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the facts as alleged in Paragraph 41 of Plaintiffs' *Complaint*

and therefore denies same.

42.

The allegations contained in Paragraph 42 of Plaintiff's *Complaint* are denied.

43.

The allegations contained in Paragraph 43 of Plaintiff's *Complaint* are denied.

PUNITIVE DAMAGES

44.

Defendant reaffirms and incorporates its responses to Paragraphs 1 through 43 of Plaintiff's *Complaint* as if fully set forth herein.

45.

In response to Paragraph 45 of Plaintiff's *Complaint*, Defendant admits that one purpose of punitive damages is to punish and deter defendants in general from engaging in certain conduct. The remaining allegations contained in Paragraph 45 are denied as stated.

46.

The allegations contained in Paragraph 46 of Plaintiff's *Complaint* are denied.

47.

The allegations contained in Paragraph 47 of Plaintiff's *Complaint* are denied.

In response to Plaintiff's unnumbered WHEREFORE paragraph, Defendant denies all allegations contained therein requiring a response.

WHEREFORE, having fully responded to the averments in Plaintiff's *Complaint for Damages*, Defendant The Kroger Co. respectfully prays:

- (a) That judgment is rendered in favor of The Kroger Co. and against Plaintiff;
- (b) That The Kroger Co. be discharged with all costs cast against Plaintiff;
- (c) That this matter be tried by a jury of twelve persons regarding any issues not subject to summary adjudication; and
- (d) For such other and further relief as is just and proper.

Respectfully submitted, this the 1st day of March, 2023.

**GRAY, RUST, ST. AMAND,
MOFFETT & BRIESKE, L.L.P.**
950 East Paces Ferry Road, N.E.
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/s/ *Camille N. Jarman*
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Georgia Bar No. 515323
Camille N. Jarman
Georgia Bar No. 600736
Counsel for Defendant Kroger

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH L.R. 5.1

This is to certify that I have this day served the **DEFENDANT THE KROGER CO'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT FOR DAMAGES** using the Court's electronic filing-and-service system, which will send electronic notification to all parties having appeared of record in this action:

Stephen R. Fowler, Esq.
Ronald D. Legette, Jr., Esq.
THE FOWLER FIRM, LLC
Peachtree 25th Building
1720 Peachtree Street NW
Suite 118
Atlanta, GA 30309

This is to further certify that the foregoing complies with the font and point selections approved by the Court in Local Rule 5.1. It is prepared in Times New Roman 14-point font.

Respectfully submitted this the 1st day of March, 2023.

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